



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,797	05/12/2005	Michael Roreger	512100-2047	9006

7590 08/11/2010
Frommer Lawrence & Haug
745 Fifth Avenue
New York, NY 10151

EXAMINER

HWU, DAVIS D

ART UNIT	PAPER NUMBER
----------	--------------

3752

MAIL DATE	DELIVERY MODE
-----------	---------------

08/11/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/534,797
Filing Date: May 12, 2005
Appellant(s): ROREGER ET AL.

Howard C. Lee
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 2, 2010 appealing from the Office action mailed October 20, 2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

1, 4-14, and 18-24.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

Art Unit: 3752

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

5,556,030

Paul

09-1996

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

3. Claims 1, 4-14, and 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul.

Paul discloses a dispenser for controlled release of volatile substances comprising: a reservoir (holding scented material 58) that is flat and has a top face and a bottom face and which is covered on its top face with a layer of material 23 impermeable to the volatile substances and covered on its bottom face by a first control element 50, the reservoir containing at least one volatile substance 58, the first control element 50 is composed of a material which is permeable to the at least one volatile substance, and which exerts control over the release rate of the volatile substance by means of diffusion as recited; and a second control element 22 composed of a material which is impermeable to the volatile substance and which exerts control over the release rate of

Art Unit: 3752

the volatile substance by controlling the size of the surface of the first control element independent of the physical properties of the volatile substance as recited (see Figure 6) wherein the second element 22 is in the form of a film that possess gaps 52, and wherein the first control element is pressure-sensitively adhesive and fully covered by the second control element such that during use, the volatile substance moves from the reservoir first through the first control element and then through the second control element after removal of the flap 51. The number of gaps as recited would have been a matter of design choice, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. The thickness and shapes as recited in claims 6, 11 and 12 would have been matters of design choice since such a modification involves a mere change in the size or shape of a component which is generally recognized as being within the level of ordinary skill in the art. The duration as recited in claim 17 would also have been a matter of design choice depending on the material used, and the limitations of claims 18-22 would all have been matters of design choice regarding types of materials and material weight.

(10) Response to Argument

In the device of Paul, the side walls or panels 22 and 23 are non-permeable as stated above and panel 22 is a film which is peeled back to release the volatile substance. The panel 22 can be peeled back as far as needed to release the desired amount of the substance and thus control the amount of substance released, therefore making the panel a control element. The panel 23 is impermeable as stated above and is also a

Art Unit: 3752

control element by not allowing passage of the volatile substance. Therefore, even though 22 and 23 are packing for the dispenser, they are nonetheless control elements. This office action was made based on the Figures 5-7 and not of Figure 2. Since the first control element 50 has the panel 22 attached (bonded) to it in which the panel is to be pulled back, the element is pressure-sensitively adhesive, since adhesive is defined as tending to adhere (to stick together). Thus the term adhesive was given its broadest and reasonable interpretation according to its definition. The Appellant has not further defined his adhesive. The claim limitation "independent of the physical properties of the at least one volatile substance" bears no patentable distinction over the prior art since the device of Paul dispenses volatile substances regardless of the physical properties of the volatile substance 58. The term "physical properties" is so broad that it can be interpreted as being a vast number of things including a size or shape of the substance 58 which will still dispense the substance regardless of its size and shape. Regarding the gaps 52 of Paul, column 11, lines 5-15 state that the gaps 52 does not leak. A size of one square meter is large compared to a typical size of a dispensing device known in the art, and therefore having 500 gaps per square meter would not be an unreasonable matter of design choice. Since claim 1 states that the second control element is impermeable, it makes no difference that the element is an open-pore foam or a web material.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3752

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Davis Hwu/

Primary Examiner, Art Unit 3752

Conferees:

/Len Tran/

Supervisory Patent Examiner, Art Unit 3752

/Daniel G. DePumpo/

Primary Examiner, Art Unit 3700